

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

06 NOV 15 PM 1:35

DARLINGTON AMADASU

Plaintiff

CASE No.: C-1-01-182
[Spiegel/Black]

Vs

**PLAINTIFF'S MOTION TO VACATE
And SET ASIDE 11/7/06 ORDER, WITH
MEMORANDUM & DECLARATION
IN SUPPORT**

JUDICIAL NOTICE

MERCY FRANCISCAN HOSPITAL-WESTERN HILL, et al
Defendants

Now comes, Darlington Amadasu, Plaintiff, Pro Se, and moves this court for an Order vacating and setting aside the 11/7/06 Magistrate's Order granting unspecified defendant's emergency motion to take deposition of plaintiff Darlington Amadasu [on November 8, 2006]. The grounds are in the following memorandum and annexed supporting declaration.

MEMORANDUM

Plaintiff was surprise to receive by ordinary mail on Saturday, November 11, 2006 magistrate's Order granting defendant's purported Emergency Motion to Take Deposition of Plaintiff Darlington Amadasu. Plaintiff never ever received from any of the defendants any motion for leave to depose him. If plaintiff had received such a motion he certainly would have filed a memorandum in opposition. The unspecified defendant filed the motion to depose without serving plaintiff the motion. The defendant (s) is/are engaging in trickery, fraud and deception against the plaintiff.

The order constitutes an improper ex parte order based on ex parte motion. The order failed to identify the specific defendant that made the motion and date it was served. There are many defendants in this action. The order was made 11/7/06 and if it was posted by ordinary mail on 11/7/06, excluding

11/7/06, and adding 3 days, the order may be delivered on 11/10/06 pursuant to FRCP 6(e). Plaintiff actually received the order on 11/11/06.

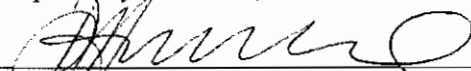
Plaintiff habitually checks his mailbox daily and plaintiff received no defendant's motion to depose him to the present. Specifically, plaintiff checked for mail from 11/7/06 through 11/10/06 no order was delivered but on 11/11/06 the order was received by ordinary mail.

THIS COURT SHOULD TAKE JUDICIAL NOTICE that on **March 28, 2002**, Plaintiff underwent gruesome deposition conducted jointly by Karen A. Carroll and Deborah R. Lydon, attorneys for all defendants, at the Law Firm of Kohnen & Patton, LLP. Accordingly, defendants had already deposed the plaintiff in this case and factual allegations upon which the 3/28/02 deposition was made have not been amended. By the amended Calendar Order dated 5/23/06, defendants have more than 5 months to file and serve motion to depose. Plaintiff reserves the right to know and to challenge the grounds for the defendant's purported emergency motion to depose plaintiff.

CONCLUSION

WHEREFORE, based on the foregoing, plaintiff prays this court to grant the relief sought herein, for fairness, due process and equal protection under the law.

Respectfully submitted,


Darlington Amadasu, Plaintiff, Pro se

CERTIFICATE OF SERVICE:

I hereby certify that a true copy of the foregoing was served on Karen A. Carroll, 201 E. Fifth Street, Ste. 800, Cincinnati, OH 45202 and Deborah R. Lydon, 255 E. Fifth Street, Ste. 1900, Cincinnati, OH 45202 by USPS mail on 11/13/06

